

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-2104

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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P/S

DOCKET NO. 77-2104

DEC 7 1977

NORMAN BRIGHT,
Appellant

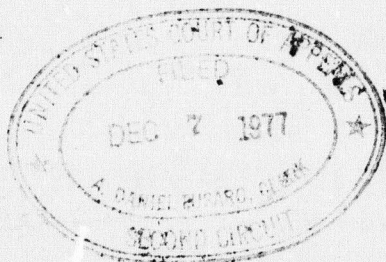
-vs-

GEORGE C. WILKINSON, Warden,
Federal Correctional Institution
Danbury, Connecticut,
Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT

APPENDIX
BRIEF FOR APPELLANT

Norman Bright
Federal Correctional Institution
Pembroke Station
Danbury, Connecticut 06810



PAGINATION AS IN ORIGINAL COPY

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PRELIMINARY STATEMENT

The instant case presents the issue of whether guidelines promulgated by the United States Parole Commission violate the sentencing provisions set forth by Congress at 18 U.S.C. 4205. Appellant Bright was sentenced pursuant to 18 U.S.C. 4205(b)(2)* and was denied parole by the Parole Commission. The Commission based its decision exclusively upon its guidelines. Appellant contends that the failure of the Commission's guidelines to recognize and weigh explicitly Appellant's institutional adjustment and performance violates Congress' statutory scheme, which provides alternative sentencing options to judges.

Appellant Bright filed, pro se, a petition for a writ of habeas corpus which was denied on August 2, 1977 by United States Magistrate Arthur H. Latimer, who did not order the respondents to file an answer. Appellant filed, pursuant to Rule 2 of the district's 1977 revised rules for magistrates, and the court affirmed the decision of the Magistrate under date of August 15, 1977.

* 18 U.S.C. 4205(b)(2) is a verbatim reenactment of 18 U.S.C. 4208(a)(2). Both provide, in pertinent part, that... "the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such times as the Commission may determine..." The 18 U.S.C. 4205(b)(2) sentence is often referred to as a "(b)(2)" sentence.

STATEMENT OF FACTS

Appellant Norman Bright was convicted of violations of Title 21 United States Code Section 841 (Dist. Narcotics S-1). On February 14, 1977, he was sentenced to a five year term of imprisonment, imposed by the Honorable Thomas Duffy of the United States District Court for the Southern District of New York. Appellant Bright was sentenced pursuant to 18 U.S.C. 4205(b)(2). Appellant Bright began serving his federal sentence on February 14, 1977.

Appellant Bright received his initial parole hearing before two Parole Commission hearing examiners of the United States Parole Commission on at their June, 1977 appearance to the Federal Correctional Institution at Danbury, Connecticut. These examiners, relying on the Parole Commission guidelines effective May 14, 1976, codified at 28 C.F.R. 2.20 (1976), evaluated Appellant Bright's parole prognosis.*

The guidelines consist of a matrix listing on its vertical axis six categories of "severity of offense behavior" ranging from "low" to "greatest". The severity of an offense is categorized according to the Commission's view of the nature of a crime; an inmate's placement into a category is based on a description of the crime for which he or she has been charged or convicted. Thus, an inmate's offense severity remains unchanged during the period of incarceration.

*Since 1976, the guidelines have been modified in some minor ways, none of which affect Appellant's claim, because Appellant's case continues to be governed by the guidelines used at the initial hearing. See 42 Fed. Reg. 39813 (August 5, 1977). For the Court's information, a copy of the modified guidelines have been attached as Exhibit A to Appellant's brief.

In evaluating Appellant Bright's "offense severity", the hearing examiners went to the chart of crimes prepared by the Parole Commission and found Appellant's crime as being in the "very high" severity category, and rated Appellant Bright accordingly.

The horizontal axis of the guideline matrix consists of four categories of "offender characteristics" called the parole prognosis or "salient factor score." The prognoses possible range from "very good" to "poor". Placement in a prognosis category depends on the number of points received in the salient factor score. At the time of Appellant Bright's hearing, an inmate could score a maximum of eleven points on seven items in the salient factor score.

For "Item A" of the salient factor score, an inmate was rated according to the number of prior convictions; if the inmate had no prior convictions, he or she could have received two points, one or two prior convictions resulted in a score of one point, and three or more prior convictions yielded no points. Appellant Bright received two points for "Item A". "Item B" looked at prior incarcerations. No prior adult or juvenile incarcerations gave an inmate two points; one or two prior incarcerations yielded one point, and three or more prior convictions resulted in no points. Appellant Bright received two points for "Item B". The score for "Item C" was based upon the age of the inmate when first committed to a prison. If the inmate was 17 years or younger, he or she received no points. If the inmate was between 18 to 25 years, one point was given. If the inmate was 26 years or older, two points were given. Appellant received one point. "Item D" questioned whether the offense for which the inmate was serving involved auto theft or

checks. If it did not, the inmate received one point. Appellant Bright received one point. "Item E" was scored according to whether the inmate had had parole revoked or had been committed for a new offense while on parole. If the answer was no, then the inmate received one point. Appellant Bright received one point for this item. "Item F" stated, if an inmate had no history of heroin or opiate dependence, he received one point; where past drug dependence was shown, the inmate received no points. Appellant Bright received one point for this item. For "Item G", the Commission inquired into whether the inmate had had verified employment (or full time school attendance) for a total of at least 6 months during the last 2 years in the community. Where the answer was yes, the inmate received one point. Appellant Bright received this point.

Appellant Bright's salient factor score totalled 10 out of the eleven points possible. He was therefore grouped into the "very good" parole prognosis category.

As is evident from the foregoing list, all of the questions on the salient factor score were totally retrospective in nature. Thus, the salient factor score did not reflect any data about inmate's institutional adjustment or progress made towards rehabilitation since incarceration.

Having evaluated the offense severity and salient factor score of Appellant Bright, and using these two indices alone, the hearing examiners applied their grid to determine the intersection point for a person with a salient factor score of 10 and very high offense severity rating. The intersection point indicated a guideline range from 26 to 36 months to be served before release. Therefore, applying the guidelines, the hearing examiners denied Appellant Bright parole and continued

him for another review at the one third point of his sentence as required by 28 C.F.R. 2.14(e)(1976).

When Appellant Bright received his "Notice of Action" from the Parole Commission, the following statement of reasons was given:

CONTINUE FOR HEARING AT ONE THIRD OF SENTENCE.
REASON: Your offense behavior has been rated as very high severity because you were involved in the sale of heroin and cocaine. You have a salient factor score of 10. You have been in custody a total of 4 months. Guidelines established by the Commission for adult cases which consider the above factors indicate a range of 26-36 months to be served before release for cases with good institutional program performance and adjustment. After review of all relevant factors and information presented, a decision below the guidelines at this consideration is not found warranted. Commission policy prohibits a continuance in your case past one-third of sentence at initial hearing. Therefore, your case has been scheduled for further consideration at one-third of your sentence. (Emphasis added.)

Appellant Bright filed an appeal to the Regional Director of the Parole Commission; the Regional Director's response was:

Affirmation of the previous decision (a) No other information submitted for requested review was deemed significant enough to affect the decision
(b) Reasons given support the order.

Appellant Bright then filed an appeal to the United States Parole Commission National Appeals Board whose reply was also an affirmation of the previous decision.

On July 19, 1977 Appellant Bright, pro se, filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. 2241, in the District Court for the District of Connecticut. Without ordering respondents to answer and without counsel being appointed to the case, the Honorable Arthur H. Latimer, United States Magistrate dismissed the petition. Appellant filed, pursuant

to Rule 2 of the district's 1977 revised rules for magistrates, a Request for Judicial Review, and the Court affirmed the decision of the Magistrate under date of August 15, 1977.

Appellant Bright, still proceeding pro se, filed a "Notice of Appeal" from the judgment on August 15, 1977.

I. 18 U.S.C. 4205 CREATES ALTERNATIVE SENTENCING PROCEDURES FOR JUDGES

Under 18 U.S.C. 4205, a federal judge who is imposing a sentence of imprisonment exceeding one has three alternative ways in which to instruct the Parole Commission on when a prisoner may be eligible for parole. Section (a)* provides:

(w) whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or over thirty years, except to the extent provided by law.

Section (b) permits a court to: (1) designate in the sentence imposed, a maximum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine.

Thus, under this scheme, the 4205(a) or "regular" adult sentence precludes parole consideration prior to one-third of the inmate's sentence, the "(b)(1)" sentence permits the timing of parole eligibility to be determined by the sentencing judge, and the "(b)(2)" sentence permits parole eligibility at any point of incarceration as determined by the Parole Commission.

* 18 U.S.C. 4205(a) is a recodification and reenactment of 18 U.S.C. 4202 (under which an inmate was eligible for parole only after serving one-third of a sentence or fifteen years of a sentence over forty-five years). 18 U.S.C. 4202 was the only sentencing procedure available until 1958. In 1958, 18 U.S.C. 4208 was enacted to provide an alternative to 4202. 18 U.S.C. 4205 is the 1976 recodification which combines the provisions of the earlier 18 U.S.C. 4202 and 18 U.S.C. 4208.

Appellant was sentenced under 18 U.S.C. 4205(b)(2). Thus, appellant did not have to serve a minimum period of time before parole eligibility; rather he became eligible for parole as early in their incarceration as the Commission designated.

In United States v. Oates, slip op. 6389 (2d Cir. June 3, 1977), the court described the role of the judiciary in interpreting statutes. It said, "(o)ur function as an interpretive body is, of course, to construe legislative enactments in such a way that the intent of the legislative body is carried out." Oates, supra, at 6447. Here, as in Oates, the Court must look at a statutory scheme and interpret its meaning. And to do so, the Court must consider both the language of the statute and the legislative history which illuminates Congress' choice of words.

In offering the sentencing judge three options, Congress permitted the judge to choose what he or she deems to be the best option for each convicted person. That the legislature intended to provide distinct alternatives to judges can be seen by the language and structure of the statute, which provides three alternative sentencing methods. Legislative history of the sentencing provision further explains Congress' intent. When the author of the bill, Congressman Emmanuel Celler, discussed his proposal of 18 U.S.C. 4208 as an alternative sentencing procedure to the only other sentence then available, 18 U.S.C. 4202, he detailed the reason for allowing the judge this option:

The present statute, which is section 4202 of title 18 of the United States Code, provides that a prisoner may not be eligible for parole until he has served one third of the sentence imposed. This is a purely arbitrary limitation and does not take into consideration the varying

responses which individual prisoners make to the rehabilitation program carried on in our Federal penal and correctional institutions. It frequently happens that a prisoner is ready for release before the statutory minimum of eligibility is reached. The sentencing judge has the benefit of the presentence report, is familiar with local conditions, and any aggravation or mitigation circumstances involved. In cases where he believes the defendant might respond quickly to the rehabilitation program, the proposed bill would give the judge the authority to fix an earlier eligibility date for release.

Hearing on H.J. Res. 424, H.J. Res. 425 and J.R. 8923 before subcommittee No. 3, House Committee on the Judiciary, 85th Congress, 2d Sess., Ser. 14 at 5 (1958).

The fact that the opportunity to assess the rehabilitation progress of an inmate was central to the 4208(a)(2) sentence was reaffirmed by testimony of the then Deputy Attorney General Lawrence E. Walsh, who said:

The purpose of this bill is to permit a judge to impose on...(the convicted felon) a sentence with a broad enough range between the minimum and the maximum so that the people who work with him from day to day in the prison can see his progress and pick that very moment when he is best suited to go back to the community and take an active part.

Hearings, supra, at 8.

Thus 4208(a)(2) was designed to give judges the opportunity of imposing an indeterminate sentence which would allow early parole consideration. Moreover, the reason for providing early parole consideration was to permit the Commission to see an inmate's institutional performance and rehabilitative progress--that is, the information which was unavailable to the judge at the time of sentencing, but which becomes available to parole hearing examiners by way of the reports submitted by correctional officers, who make "day-to-day observation(s) of the prisoner as he serves his term." Hearings, supra, at 18.

It is not the legislative history alone which supports this interpretation of 4208(a)(2). Courts too have recognized that the major purpose of Congress' passage of 4208(a)(2) was to encourage inmates' rehabilitation efforts by allowing for serious parole consideration prior to the one-third point of their sentence.

In Grasso v. Norton, 520 F.2d 27 (2d Cir. 1975), this Court, citing Garafola v. Benson, 505 F.2d 1212, 1217 (7th Cir. 1974), said of 4208:

(a) major purpose of any indeterminate sentencing provision is to give the Parole Board discretion to determine when a prisoner has reached that point in his rehabilitation process at which he should be released under supervision to begin his readjustment to life in the community. By keeping the minimum low, the prisoner is encouraged 'to earn favorable consideration for parole in accord with the public policy embodied in the parole statutes.'

520 F.2d at 32.

Garafola v. Benson, supra, goes further to state:

(i) is apparent from the terms of the statutes governing the sentencing of adult offenders, 4202 as well as 4208, that at least one major purpose of 4208(a)(2) is to provide the sentencing judge with the option of allowing the Parole Board to release the prisoner on parole at any time before the one-third point if in its judgment events after the date of sentencing warrant early release.

505 F.2d at 1216 (emphasis added).

The statutory purpose of 4205(b)(2) is implemented by the sentencing judge who, at the time of sentencing, has knowledge of a convicted felon's background, which is summarized in the pre-sentence report. With this information, a judge makes a decision as to an appropriate sentence. By choosing a (b)(2) sentence over the other alternatives, the judge consciously decides to permit an inmate to become eligible for parole before serving a minimum time period.

Thus, when someone serving a (b)(2) sentence is before the Parole Commission, the one additional piece of information avail-

Although the regulations promulgated to govern parole decisionmaking list a number of factors besides the guidelines which might be considered, including various indicators of institutional performance and rehabilitation, such factors are not given weight in making the decision as to parole eligibility. As is stated in appellant's "Notice of Action", rehabilitation was not a factor in their parole decision because each decision under the guidelines is predicated upon the inmates' "good institutional program performance and adjustment". As stated by the Commission, "(t)he time ranges specified by the guidelines are established for cases with good institutional performance." Report, The United States Parole Commission (1977) at 10.

The minimal consideration given to rehabilitative progress under the Commission's present system of decision-making is inconsistent with the emphasis on rehabilitative progress that is evidently the purpose of 4205(b)(2). The very reason for providing judges with the sentencing option of early parole eligibility is undermined by the Commission's overwhelming reliance upon a set of guidelines which contain no indicators of institutional performance or rehabilitation. Under the present system, inmates have little incentive to work at rehabilitation during incarceration. They know that there is little likelihood of avoiding serving the minimum term specified, NOT by the sentencing judge, but by the parole guidelines.*

As stated earlier, Congress intended that institutional performance be a major factor in parole consideration under 4205(b)(2). In other words, Congress intended that parole con-

* The guidelines often result in setting minimum times to be served which are in excess of the imposed by the sentencing judge. For example, an individual, represented by Attorneys of Yale Law School, was convicted of a conspiracy to sell cocaine and was given a twenty month sentence; under the guidelines his criminal behavior was rated as "very high", his parole prognosis as "good" and his guideline time as from 36 to 45 months to be served before he was eligible for parole.

able to the Commission which was not available to the sentencing judge is what has happened to that individual while incarcerated. This rehabilitative progress is what a sentencing judge wants the Parole Commission to use as an indicator of parole eligibility. Thus, to ignore the (b)(2) designation, to fail to distinguish it from other sentences, and to fail to treat a (b)(2) inmate differently from one sentenced under (b)(1) or under 4205(a) is to violate the statutory scheme crafted by Congress.

II. THE PAROLE COMMISSION'S PRESENT GUIDELINES VIOLATE 4205(b)(2) BECAUSE THEY FAIL TO MEASURE REHABILITATION.

The Parole Commission relies very heavily upon its guidelines when making parole release decisions. Between October, 1973, and March, 1974, 91.7% of all decisions at initial parole hearings were within the guidelines. Project, Parole Release Decisionmaking and the Sentencing Process, 84 Yale L.J. 810, 825 n. 75 (1975) (hereinafter Parole Release Decisionmaking). More recent data continues to confirm heavy reliance upon the guidelines. From April 1976 until September 1976, 80.8% of all parole decisions were within the guidelines. See Report, the United States Parole Commission (1977) at 23. And, of course, the guidelines were relied upon in determining whether or not to release the Appellant.

As described above, supra, at pp. 2-5, the guidelines consist of two factors upon which inmates are scored. The "offense severity" rating is based on the Commission's classification of a criminal conviction and is not subject to change during the inmate's incarceration. The second factor, the "salient" factor score, is based upon a number of characteristics thought to be good indicators that the inmate will succeed on parole. All of the characteristics which form an inmate's salient factor score are derived from the inmate's behavior prior to incarceration and, like the offense severity rating, do not change during an inmate's incarceration.

The Guideline Table thus represents two major departures in previous parole release decisionmaking. It establishes explicit criteria which, in most cases, determine the parole release eligibility date. And in its choice of criteria, it abandons any attempt to condition release upon any rehabilitative factors.

Parole Release Decisionmaking, supra, 84 Yale L.J. at 826.

sideration for (b)(2) prisoners be more than simply a reconsideration of the information available to judges at the time of sentencing. Yet the guidelines simply reiterate all that was known to the sentencing judge and do not even look to institutional adjustment and rehabilitative progress, the only factors not known to the sentencing judge. Thus, rehabilitation is only considered after guidelines are used and guidelines are determinative.*

CONCLUSION

The United States Parole Commission did not consider the progress made by appellant towards rehabilitation when it denied him parole. Instead, it relied exclusively upon guidelines which fail to explicitly weigh and factor into the parole decision an inmate's rehabilitative progress and thus which violate the intent of the judges who chose to sentence Appellant pursuant to the (b)(2) option.

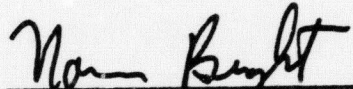
In applying the guidelines to appellant, without consideration of rehabilitation, the Commission has made the (b)(2) sentence meaningless. Appellant's prospects for parole, as judged by his guidelines, is the same at the time of sentencing, three months after his commitment, and at the one-third point of his sentence. The application of the guidelines in this case thus violates the Congressional statutory scheme, its intent, and the expectations of the sentencing judges, for it resulted in a parole consideration which did not meaningfully consider rehabilitation. Therefore, Appellant, who was sentenced under 18 U.S.C. 4205(b)(2) is

* This Court has repeatedly required that the reasons for parole denial be given in explicit terms. See Coralluzzo v. New York State Parole Board, slip op. 5067 (2d Cir. July 28, 1977) and United States ex rel. Johnson v. New York State Board of Parole, 500 F.2d 925 (2d Cir. 1974), vacated as moot, 419 U.S. 1015 (1974). Thus, if the Commission were to attempt to argue that the rehabilitative efforts of Appellant had been considered, it is odd that the Commission has failed to mention rehabilitation in any of its communications with Appellant.

entitled to immediate release or, in the alternative, to a parole hearing in which the Commission must consider his institutional adjustment and rehabilitative progress.

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

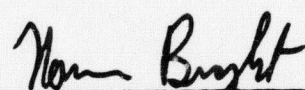

Norman Bright/Appellant

In Propria Personam

Federal Correctional Institution
Pembroke Station
Danbury, Connecticut 06810

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief was mailed to the Office of the United States Attorney, 270 Orange Street, New Haven, Connecticut, 06510, this 22nd day of November, 1977.


Norman Bright

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NORMAN BRIGHT

vs

CIVIL #B-77-241

CURTIS C. CRAWFORD, Acting
Chairman, United States
Parole Commission, Washington,
D. C.; et al

JUDGMENT

This cause came on for consideration on a petition for a Writ of Habeas Corpus and the Magistrate having filed a Memorandum of Decision under date of August 2, 1977, dismissing said petition, and the court having affirmed the Decision of the Magistrate under date of August 15, 1977,

It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the responder and the petition for a Writ of Habeas Corpus is dismissed.

Dated at Bridgeport, Connecticut, this 16th day of August, 1977.

MICROFILM

AUG 16 1977

BRIDGEPORT

SYLVESTER A. MARKOWSKI, Clerk

BY Vincent R. DeRosa
Vincent R. DeRosa
Deputy in Charge

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN

NORMAN BRIGHT

vs.

CIVIL NO. B-77-241

CURTIS C. CRAWFORD, ACTING
CHAIRMAN, UNITED STATES PAROLE
COMMISSION, WASHINGTON, D. C.,
ET AL

VACATING OF JUDGMENT

In view of magistrate rule #2 of the district's 1977 revised rule
for magistrates, Judgment which was entered August 3, 1977 is hereby
Vacated.

Dated at Bridgeport, Connecticut, this 12th day of August, 1977.

SYLVESTER A. MARKOWSKI, Clerk

By Vincent R. DeRosa
Vincent R. DeRosa
Deputy in Charge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

NORMAN BRIGHT

VS.

CURTIS C. CRAWFORD, ACTING
CHAIRMAN, UNITED STATES PAROLE
COMMISSION, WASHINGTON, D. C.,
ET AL

CIVIL NO. B-77-241

J U D G M E N T

This cause came on for consideration on a petition for a Writ of Habeas Corpus and the Court having filed its Memorandum of Decision under date of August 2, 1977, dismissing said petition,

It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the respondent and the petition for a Writ of Habeas Corpus is dismissed.

Dated at Bridgeport, Connecticut, this 3rd day of August, 1977.

SYLVESTER A. MARKOWSKI, Clerk

By

Vincent R. DeRosa
Vincent R. DeRosa
Deputy in Charge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
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U.S. DISTRICT COURT
NEW HAVEN, CONN.

* * * * *

Herman A. Powell,
Petitioner

vs.

CIVIL NO.

George C. Wilkinson, Warden
Federal Correctional Institution,
Danbury, Connecticut
Respondent

* * * * *

Norman Bright,
Petitioner

vs.

CIVIL NO.

Curtis C. Crawford, Acting
Chairman, United States Parole
Commission, Washington, D.C.
and George C. Wilkinson, Warden,
Federal Correctional Institution,
Danbury, Connecticut
Respondents

B77-241

* * * * *

MEMORANDUM OF DECISION

Denied parole under the parole guidelines while serving indeterminate sentences imposed under 18 U.S.C. §4208(a)(2) or its recodified version under the Parole Commission and Reorganization Act, 18 U.S.C. §4205(b)(2), petitioner inmates at the Federal Correctional Institution at Danbury challenge adherence to those guidelines in the ordinary course as "arbitrary and capricious...an unwarranted intrusion into the judicial sentencing process, and...in excess of the Parole Commission's statutory authority".

The petitions are without merit, as this Court has repeatedly held in previously weighing similar claims. If sentenced under the provisions just mentioned, a prisoner is eligible

for early parole consideration but not thereby entitled to a grant of parole, and consequently "[t]here is no inconsistency between the reliance on guidelines and the...[indeterminate] sentencing option", DuBois v. Wilkinson, Civil No. B-77-129 (D. Conn. April 22, 1977). Indeed, it is clear that Congress has intended the substance of parole judgments to be committed to the Commission's discretion, exercised within a framework of guidelines such as that here employed, to attempt to achieve fair and uniform measures of justice. Id. Such contemplated resort to the guidelines, moreover, is surely a constitutional exercise of the Commission's authority, cf. Thomas v. Wilkinson Civil No. B-77-131 (D. Conn. June 1, 1977).

Contrary to petitioners' additional contentions, the Commission's reference to the guidelines and "all relevant factors and information presented" is generally sufficient notice of the reasons for a parole denial conforming to the guidelines, cf. 18 U.S.C. §4206, and adequate indication that requisite information was considered, cf. 18 U.S.C. §4207. While also broadly expressing a concern that individual circumstances be taken into account, the instant petitions assert no basis for speculation that the Commission ignores its appropriate power to "grant or deny release on parole notwithstanding the guidelines...if it determines there is good cause for so doing", 18 U.S.C. §4206(c), and petitioners' apprehension that "rehabilitative factors" are no longer viewed as relevant lacks any alleged foundation. In that regard, it should be pointed out that "the decision to use the figure suggested by the guidelines is made only after consideration of rehabilitative factors", Kincade v. Wilkinson, Civil No. B-76-341 (D. Conn. July 13, 1977), and the guideline time ranges "are

established specifically for cases with good institutional adjustment and program progress", 28 C.F.P. 52.20(b) (1976).

The pending petitions are accordingly dismissed, and the papers may be filed without fee. The undersigned magistrate's ruling is hereby filed with the Clerk for mailing of copies to the parties pursuant to the district's 1977 revised rules for magistrates, Rule 2 of which provides in part that to secure judicial review

"any party wishing to object must within ten days after being served with such copy serve on all parties, and file with the clerk, written objection which shall specifically identify the ruling, order, proposed findings and conclusions, or part thereof to which objection is made and the factual and legal basis for such objection".

Dated at New Haven, Connecticut this 2nd day of August, 1977.

Arthur H. Latimer
ARTHUR H. LATIMER
UNITED STATES MAGISTRATE